

02-27-03

APR 3/10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
MELDON L. TALBOT
Serial No. 09/706,992
Filed November 6, 2000
FOR: ANKLE BRACE

:
: Art Unit 3764
: Examiner: L. Hamilton
:
:

TRANSMITTAL OF
APPELLANT'S BRIEF

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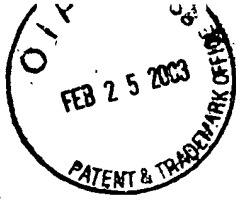
Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

Sir:

Transmitted herewith, in triplicate, is Appellant's Brief.
Also enclosed is a check in the amount of \$160.00 for the small
entity appeal brief fee (Check No. 6173). Any additional fee
should be charged to Deposit Account 09-0948. A duplicate of
this transmittal sheet is attached.

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Dated: February 25, 2003
Express Mail #EK655307812US



#9
3/5/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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MELDON L. TALBOT : Art Unit 3764
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Sir:

REAL PARTY IN INTEREST

The real party in interest is the applicant, Meldon L. Talbot. This application is not assigned.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

STATUS OF CLAIMS

All pending claims 1-12 were finally rejected on October 1, 2002. The Appendix is a copy of all pending claims 1-12.

STATUS OF AMENDMENTS

No amendment has been filed subsequent to the mailing of the final rejection.

SUMMARY OF INVENTION

The invention comprises (i) a single strap ankle brace (Claims 1-4 and 7-10) and (ii) a method for bracing the ankle by use of said single strap ankle brace (Claims 5-6 and 11-12).

ISSUES

1. Whether the final rejection is premature because it is silent regarding the "Declaration of Inventor pursuant to 37 C.F.R. §1.132". Exhibit A is a copy of an OIPE acknowledgment dated November 9, 2001 of said "Notice of Filing and Declaratin [sic] of Inventor Pursuant to 37 CFR 1.132". Exhibit B includes copies, as they appear in counsel's file, of the said "Notice of Filing" and "Declaration".

2. Whether the final rejection correctly states:

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castiglia ('746) in view of Wise ('751). [page 2]

3. Whether claims 1 to 12 stand or fall together.

Specifically, whether (absent remand), the final rejection is incorrect for failure to comply with In re Dembiczak and Zinbarg, 59 USPQ2d 1614 (Fed.Cir. 1999) and In re Sang-Su Lee, 277 F.3d 1338 (Fed.Cir. 2002).

GROUPING OF CLAIMS

Claims 1-12 are finally rejected as a group. The ensuing "Argument" explains why claims 1-12 comprise two separately patentable claim groups, namely, Group 1 (ankle brace, claims 1-4 and 7-10) and Group 2 (method claims 5-6 and 11-12).

ARGUMENT

I.

There is no rejection under 35 U.S.C. §112, first paragraph.

There is no rejection under 35 U.S.C. §112, second paragraph.

There is no rejection under 35 U.S.C. §102.

II.

Response to Rejection Under 35 U.S.C. §103

(a) Errors in the Final Rejection

1. The final rejection under 35 U.S.C. §103 is erroneous because the record includes no prior art evidence that supports it. See In re Gartside, 203 F.3d 1305, 1316, 53 USPQ2d 1769, 1776 (Fed.Cir. 2000).

2. It is elementary that the Examiner must consider all of the relevant evidence of record as a prerequisite to any valid rejection under 35 U.S.C. §103. The final rejection in this case is premature. It needs to be vacated or reversed because it is silent as to consideration of the "Declaration of Inventor

Pursuant to 37 C.F.R. §1.132" filed November 9, 2001 (Exhibit B hereof). See the inventor's declaration, paragraphs 4-7, which state:

(4) I disagree with the statement in the Office communication that: "Castiglia discloses the invention substantially as claimed".

(5) Some of the reasons for my disagreement are set forth in the attached October 23, 2001 letter addressed to the Honorable Commissioner of Patents and Trademarks.

(6) The said letter is a true statement of my own experiences as stated therein.

(7) The said letter was voluntarily written exclusively by me, and it is entirely my own work.

Disregarding the inventor's §1.132 declaration, the final rejection reiterates, as its apparent major premise:

In this case, Castiglia discloses all limitations of the invention substantially as claimed (see above rejection), except for the inelastic material.... [page 4; emphasis in original]

3. The final rejection is erroneous because it fails to include particular factual findings regarding the lack of any "suggestion, teaching, or motivation to combine" the Castiglia and Wise references, as required by Dembiczak, supra.

4. The final rejection is erroneous because it fails to "present a full and reasoned explanation of the decision [to finally reject]" as required by Sang-Su Lee, supra.

5. The final rejection is erroneous because it fails to set forth the examiner's "findings and the grounds therefor, as supported by the agency record" as required by Sang-Su Lee, supra.

6. The final rejection is erroneous because it is significantly based on conclusory statements contrary to the teaching Dembiczak, e.g.:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the flexible, inelastic material taught by Wise in place of the elastic material disclosed by Castiglia to provide an alternative material for the strap which would provide better support and acceptable levels of comfort when the strap is wrapped in a figure eight position about the foot and ankle. [Final rejection, page 4; emphasis added]

This "motivation" conclusion is solely examiner speculation. The examiner has not and cannot set out any specific teaching in either Castiglia or Wise to justify it.

In fact, the October 24, 2001 amendment and the inventor's declaration show why the examiner's "it would have been obvious" conclusion is not merely unsupported by any "substantial evidence", Gartside, supra, but it is actually contrary to the "substantial evidence" in the record which shows otherwise.

(b) Specific Limitations in the Rejected Claims Which are Not Described in the Prior Art Relied Upon by Examiner

1. Counsel deems it sufficient for the purposes of this appeal to rely on the examiner's admission that the art relied on does not disclose:

A single strap ankle brace...wherein said single strap ankle brace is made of a flexible substantially inelastic web of fabric....

This limitation is included directly or indirectly in all of the rejected claims 1-12.

2. The said limitation renders the claimed subject matter unobvious over the prior art for reasons set forth in paragraphs 1-5 of applicant's own October 23, 2001 letter attached to and filed as a part of his declaration under 37 C.F.R. §1.132, namely:

1. The Castiglia Patent concerns a very complex wrapping of an injured ankle with a material that is made primarily of an elastic material. I have tried many ankle supports made of an elastic material over the years and some have given substantial protection against spraining or re-spraining an ankle as compared to my invention using an inelastic, flexible ankle brace.

2. I have taken my ankle brace and duplicated the method described by Castiglia for wrapping an ankle. I had to use three of my ankle braces attached to each other, end to end, in order to have enough length available to complete Castiglia's instructions.

3. Castiglia's method of wrapping an ankle results in three layers of the ankle brace passing under the foot and three layers of the ankle brace passing in front of the ankle, over the Medial Arch. All of these excessive layers may slightly aid in the effective support of an ankle but

would make the device very uncomfortable to wear for more than a few minutes. Imagine putting three layers of material of any kind from side to side under the middle of your foot (under the Medial Arch) and walking on it.

4. Two parts of the wrap described by Castiglia proceeds from the back of the foot (the Achilles Tendon area) at a downward angle of about 45 degrees and goes under the foot (under the Medial Arch) before proceeding elsewhere. In my opinion it would be very difficult to keep an elastic material properly in place without sliding off the heel after a few minutes of walking or running. I have actually wrapped my ankle with the inelastic, flexible material from my invention (See No. 2, above) and it is difficult to achieve the 45 degree part of Castiglia's method and almost impossible to keep the inelastic material from slipping off the heel when walking. Castiglia's method of wrapping an ankle is simply incompatible with an inelastic, flexible material in opposition to the examiner's assumptions.

5. My method of wrapping an ankle (09/706,992) is a simple figure 8 with one layer of material passing under the foot. Castiglia's method is very complex (as described in Nos. 3 & 4, above) and has no resemblance to a simple figure 8. [Emphasis in original]

3. As stated in the "Response to Office Action Mailed July 17, 2001", pages 4-5 and 6-9,¹ the combination of Castiglia and Wise references, taken as a whole, does not suggest the claimed subject matter because

¹ The next action, mailed October 1, 2002, was "final". The examiner apparently has never seriously considered the said Response. Applicant is entitled to an explanation of why it does not require withdrawal of the "final" rejection. This Brief affords the examiner an opportunity, in her Answer, to do what she should have done before entering a "final" rejection. Again, it is urged that the "final" rejection is premature.

1. The claims 1-12 do not stand or fall together. Claims 1 to 4 and 7 to 10 are for a "single strap ankle brace". Claims 5, 6, 11 and 12 are for a "method for bracing an ankle". The rejection does not assert that either of the cited references make the claimed methods "obvious".

Allowance of method claims 5, 6, 11 and 12 is requested.

2. The rejection is based on a combination of references "Castiglia ('746) in view of Wise ('751)"....

3. In this case, contrary to the requirements of Dembiczak, the examiner failed to make a "rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." Instead, the rejection is feebly supported only by the Examiner's undocumented, convenient but speculative conclusion that: "It would have been obvious to...substitute the inelastic strap taught by Wise onto the invention of Castiglia in order to allow the user to cover and apply pressure to the area as desired" (action, page 2). However, such "[b]road conclusory statements regarding the teaching of multiple references...are not 'evidence'", Dembiczak, supra., and do not justify a §103(a) rejection based on multiple references. Quite to the contrary, "particular findings regarding the locus of the suggestion, teaching, or motivation to combine the prior art references" must be made. Dembiczak, supra.

The rejection must be withdrawn, and the claims allowed because the Examiner did not make the required "particular findings". Actually, the Examiner could not have done so because the written descriptions from Wise and Castiglia are inconsistent with the "substitution" premise of the rejection.

Among other things, the pending device claims 1 to 4 and 7 to 10 require "[a] single strap ankle brace" which must include all of the elements recited in the ensuing "wherein" limitations.

The rejection says that "Wise teaches an ankle support comprising a single strap of inelastic material (col. 2, lines 3-6)" (action, page 2). However, column 2, lines 3-6 of Wise must be read in context with the preceding paragraph, Col. 1, line 37 to Col. 2, line 2:

Referring now in detail to the drawings, there is shown in FIGS. 1 to 4 an ankle supporter 10 forming one embodiment of the invention including a tapered or flared, collar-like annular band 12 and a tongue or strap 14. The ankle supporter 10 is not banded. That is, it can be used for either the right foot or the left foot, and inside or outside, of the person using it, and is shown in FIGS. 2, 3 and 4 on the outside of a left foot 16 of the user. The user slips his foot through 16 through the band 12 of the ankle supporter, pulls the band down to the position thereof shown in FIGS. 2 and 4 with the tongue at the inner side of the foot and the band engaging the outer side of the ankle 17 and the upper portions of the foot and the heel. The tongue then is passed under the arch and cuboid portion 18 of the foot, is pulled taut upwardly and is adhesively taped by a tape 19 to the outer side of the lower portion 20, above the articulating point of the ankle, of the leg of the user. Taping of the tongue, while under tension, to the leg up above the ankle, in effect, attaches the cuboid portion 18, the underside of the foot, and the inner side of the foot, including the heel, to the leg above the ankle through an inelastic tendon, thereby permitting the foot to roll inwardly counter-clockwise, as viewed in FIG. 4, only slightly, and not sufficiently to sprain the ankle. Only a few turns of the adhesive tape 19, around the portion 17 of the leg and under the foot, are needed to secure the tongue 14 to the portion 17 to prevent any inward roll sprain, only a small fraction of the adhesive tape previously required to tape an ankle. The taped supporter 10, other than limiting inward roll to a safe extent does not appreciably prevent all other flexing of the ankle.

Col. 2, lines 3-6 follow:

Each of the band 12 and strap 14 preferably is composed of a thin, strong, flexible, inelastic woven tape or webbing, one excellent webbing being of a cotton web with a herring bone weave and about 2 inches wide....

When correctly read in context, it is clear that the term said "strap 14" (Col. 2, line 3) refers to "tongue or strap 14" (Col. 1, line 40). But the Wise "tongue or strap 14" is not a "single strap ankle brace" as required by the pending device claims of this application. The Wise "tongue or strap 14" must be used in combination with the "collar-like annular band 12" (Col. 1, lines 37-42) and "[t]ap[ed]...under tension, to the leg up above the ankle" (Col. 1, lines 56-58). In Wise, there is no teaching of any use of the "tongue or strap 14" per se, i.e., in the absence of the "annular band 12" as a "single strap ankle brace" as claimed by Talbot. Indeed, the rejection concedes that point by the ambiguous assertion that "Wise teaches an ankle support comprising a single strap of inelastic material" (action page 2).

Furthermore, to substitute the "strap or tongue 14" of Wise somehow "onto the invention of Castiglia" as the rejection speculates would require destruction of the Wise combined strap and band ankle support because the postulated substitution would require elimination of the Wise "collar-like annular band 12" which is a necessary element of the Wise invention. See also the Wise claims.

In sum, the rejection contends that it would have been "obvious" to select only the "strap 14" from the Wise ankle support combination of attached elements, remove the "strap 14", and then to provide that isolated inelastic strap 14 of Wise with the various elastic strap fastening tabs 16, 20, 21 and 23 of Castiglia, rearranged, however, to conform to the arrangement of hoops and loops required by applicant's claims, and in that way reasonably expect to achieve the claimed inventions.

This part of the rejection is also flawed. The flaw resides in the examiner's unsupported generality that "Castiglia discloses the invention substantially as claimed" (action, page 2). Actually, this generality is a cover up

of the fact that the Examiner has not—apparently because the Examiner cannot—apply Castiglia to any of the claims and thus show that any of the "wherein" limitations of claims 1 to 4 and 7 to 10 are met or made obvious by Castiglia in combination with Wise.

Sang-Su Lee, supra, apparently rejecting a broad ruling that a "'specific hint or suggestion' of motivation to combine was not required" (277 F.3d at 1342) held:

"The factual inquiry whether to combine references must be thorough and searching." [quoting McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed.Cir. 2001).] It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with. See, e.g., Brown & Williamson Tobacco Corp. v. Phillip Morris Inc., 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed.Cir. 2000) ("a showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding'") (quoting C.R. Bard, Inc. v. M3 Systems, Inc., 157 F.3d 1340, 1351, 48 USPQ2d 1225, 1232 (Fed.Cir. 1998)); In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed.Cir. 1999) ("Our case law makes it clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."); In re Dance, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed.Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant); In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed.Cir. 1988) ("teachings of references can be combined only if there is some suggestion or incentive to do so.") (emphasis in original) (quoting ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.Cir. 1984)).

The need for specificity pervades this authority. See, e.g., In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed.Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these

components for combination in the manner claimed"); In re Rouffet, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed.Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed.Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").

Sang-Su Lee, supra, 277 F.3d at 1343.

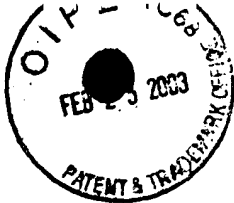
RELIEF REQUESTED

The relief requested is that the final rejection be reversed with instructions to allow all appealed claims. Alternatively, the application should be remanded.



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Dated: February 25, 2003
Express Mail #EK655307812US



APPENDIX

APPEALED CLAIMS - SERIAL NO. 09/706,992

1. A single strap ankle brace comprising a strap having a first and a second end,

wherein said single strap ankle brace is made of a flexible substantially inelastic web of fabric,

an array of plastic hooks disposed at only one of said first and second ends of said strap,

an array of plastic loops for engaging said array of plastic hooks,

said array of plastic loops being spaced on a surface of said strap,

wherein said array of plastic hooks is separated and spaced apart on said strap from said array of plastic loops such that said array of plastic hooks and array of plastic loops may be pressed together when said strap is wrapped about the ankle and foot in a figure eight configuration which exposes said array of plastic loops, and

wherein said figure eight configuration comprises a beginning end positioned at the inside of the ankle, crosses over the medial arch, loops below the foot in front of the heel, crosses over itself above the medial arch, and loops around the back of the ankle and fastens to itself at said

beginning end of said figure eight configuration at the inside of the ankle.

2. The single strap ankle brace of claim 1 wherein said array of plastic hooks and said array of plastic loops are disposed on opposite sides of said strap.

3. The single strap ankle brace of claim 1 made of constant width fabric.

4. The single strap ankle brace of claim 1 made of non-adhesive material

5. A method for bracing an ankle and associated foot which comprises:

- (i) providing the single strap ankle brace of claim 1;
- (ii) wrapping said single strap ankle brace around the ankle and associated foot in a figure eight configuration, wherein said wrapping comprises:

- (a) positioning said end of said strap on which no array of plastic hooks is disposed;
- (b) then passing a length of said strap at least once around the foot passing under the foot in front of the heel to provide one loop of said figure eight configuration then passing across a section of said strap above the foot and then

around the back of the ankle to provide the other loop of said figure eight configuration, wherein said wrapping exposes said array of plastic loops, and wherein said wrapping provides a free end of said strap upon which an array of plastic hooks is disposed; and (iii) pressing said array of plastic loops exposed by said wrapping together with said array of plastic hooks on said free end of said strap.

6. A method for bracing an ankle and associated foot which comprises:

(i) providing the single strap ankle brace of claim 1; (ii) wrapping said single strap ankle brace around the ankle and associated foot in a figure eight configuration, wherein said figure eight configuration comprises a beginning end positioned at the inside of the ankle, crosses over the medial arch, loops below the foot in front of the heel, crosses over itself above the medial arch, and loops around the back of the ankle and fastens to itself at said beginning end of said figure eight configuration at the inside of the ankle.

7. A single strap ankle brace comprising a strap having a first and a second end,

wherein said single strap ankle brace is made of a flexible substantially inelastic web of fabric,

an array of plastic hooks disposed at only said first end of said strap,

an array of plastic loops for engaging said array of plastic hooks,

said array of plastic loops being spaced on a surface of said strap,

wherein said array of plastic hooks is separated and spaced apart on said strap from said array of plastic loops such that said array of plastic hooks and array of plastic loops may be pressed together when said strap is wrapped about the ankle and foot in a figure eight configuration which exposes said array of plastic loops, and

wherein said figure eight configuration begins at the inside of the ankle, crosses over the medial arch, loops below the foot in front of the heel, crosses over itself above the medial arch, and loops around the back of the ankle and fastens to itself at said beginning end of said figure eight configuration at the inside of the ankle.

8. The single strap ankle brace of claim 7 wherein said array of plastic hooks and said array of plastic loops are disposed on opposite sides of said strap.

9. The single strap ankle brace of claim 7 made of constant width fabric.

10. The single strap ankle brace of claim 7 made of non-adhesive material.

11. A method for bracing an ankle and associated foot which comprises:

- (i) providing the single strap ankle brace of claim 7;
- (ii) wrapping said single strap ankle brace around the ankle and associated foot in a figure eight configuration;

wherein said wrapping comprises:

- (a) positioning on the inside of the ankle said end of said strap on which no array of plastic hooks is disposed;
 - (b) then passing a length of said strap at least once around the foot passing under the foot in front of the heel to provide one loop of said figure eight configuration then passing across a section of said strap above the foot and then around the back of the ankle to provide the other loop of said figure eight configuration,
- wherein said wrapping exposes said array of plastic loops, and

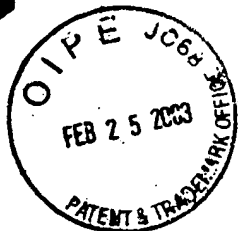
wherein said wrapping provides a free end of said strap upon which an array of plastic hooks is disposed; and

- (iii) pressing said array of plastic loops exposed by said wrapping together with said array of plastic hooks on said free end of said strap.

12. A method for bracing an ankle and associated foot which comprises:

- (i) providing the single strap ankle brace of claim 7;
- (ii) wrapping said single strap ankle brace at least once around the ankle and associated foot in a figure eight configuration,

wherein said figure eight configuration comprises a beginning end positioned at the inside of the ankle, crosses over the medial arch, loops below the foot in front of the heel, crosses over itself above the medial arch, and loops around the back of the ankle and fastens to itself at said beginning end of said figure eight configuration at the inside of the ankle.



Please return this card, indicating receipt date and Serial No., if applicable, of the following

Notice of Filing and Declaration of Inventor
~~Pursuant to 37 CFR 1.132~~

Applicant(s): Meldon L. Talbot

Title: Ankle Brace

Serial No.: 09/706992

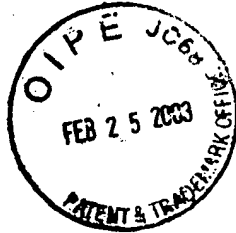
Filing Date: 11/6/00



Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application
MELDON L. TALBOT
Serial No. 09/706,992
Filed: November 6, 2000
FOR: ANKLE BRACE



:
: Art Unit 3764
: Examiner:
: L. Hamilton
:

NOTICE OF FILING OF
"DECLARATION OF INVENTOR PURSUANT TO 37 C.F.R. §1.132"

Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

Sir:

Transmitted is the "Declaration of Inventor Pursuant to 37 C.F.R. §1.132". The Declaration is submitted to establish unobviousness in view of the Castiglia reference.

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

Any fee due in connection with the submission of this "Declaration" should be charged to Deposit Account 09-0948.

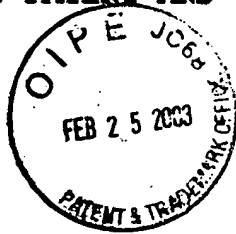
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Dated: November 9, 2001

Exhibit B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application
MELDON L. TALBOT
Serial No. 09/706,992
Filed: November 6, 2000
FOR: ANKLE BRACE



:
: Art Unit 3764
: Examiner:
: L. Hamilton
:

DECLARATION OF INVENTOR PURSUANT TO 37 C.F.R. §1.132

Honorable Commissioner of
Patents and Trademarks
Washington, D. C. 20231

Sir:

MELDON L. TALBOT states, under penalty of perjury, that the averments set forth hereinafter are true on the basis of his own personal knowledge thereof:

(1) I am the Meldon L. Talbot who is the applicant in United States patent application Serial No. 09/706,992 filed November 6, 2000.

(2) I have read and understood the Office communication identified as Paper Number 2 mailed July 17, 2001 in application Serial No. 09/706,992.

(3) I have read and understood Patent 4,085,746 (Castiglia).

(4) I disagree with the statement in the Office communication that: "Castiglia discloses the invention substantially as claimed".

(5) Some of the reasons for my disagreement are set forth in the attached October 23, 2001 letter addressed to the Honorable Commissioner of Patents and Trademarks.

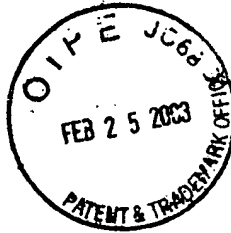
(6) The said letter is a true statement of my own experiences as stated therein.

(7) The said letter was voluntarily written exclusively by me, and it is entirely my own work.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the Application or any patent issued thereon.

November 6, 2001
Date

Meldon L. Talbot
Meldon L. Talbot



October 23, 2001

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

- RE: 1. Application of Meldon L. Talbot, Serial No. 09/706,992 -- Ankle Brace CIP.
 2. Castiglia, U.S. Patent No. 4,085,746.
 3. Wise, U.S. Patent No. 3,777,751.
 4. Further Response from Edward S. Irons to the July 17, 2001 rejection (09/706,992).

Sir:

I have studied the Castiglia Patent (4,085,746) carefully and would like to add some of my own comments to Mr. Irons response to the July 17, 2001 rejection of Serial No. 09/706,992.

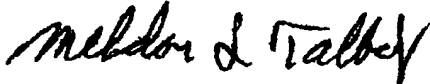
1. The Castiglia Patent concerns a very complex wrapping of an injured ankle with a material that is made primarily of an elastic material. I have tried many ankle supports made of an elastic material over the years and ~~none~~ have given substantial protection against spraining or re-spraining an ankle as compared to my invention using an inelastic, flexible ankle brace.
2. I have taken my ankle brace and duplicated the method described by Castiglia for wrapping an ankle. I had to use three of my ankle braces attached to each other, end to end, in order to have enough length available to complete Castiglia's instructions.
3. Castiglia's method of wrapping an ankle results in three layers of the ankle brace passing under the foot and three layers of the ankle brace passing in front of the ankle, over the Medial Arch. All of these excessive layers may slightly aid in the effective support of an ankle but would make the device very uncomfortable to wear for more than a few minutes. Imagine putting three layers of material of any kind from side to side under the middle of your foot (under the Medial Arch) and walking on it.
4. Two parts of the wrap described by Castiglia proceeds from the back of the foot (the Achilles Tendon area) at a downward angle of about 45 degrees and goes under the foot (under the Medial Arch) before proceeding elsewhere. In my opinion it would be very difficult to keep an elastic material properly in place without sliding off the heel after a few minutes of walking or running. I have actually wrapped my ankle with the inelastic, flexible material from my invention (See No. 2, above) and it is difficult to achieve the 45 degree part of Castiglia's method and almost impossible to keep the inelastic material from slipping off the heel when walking. Castiglia's method of wrapping an ankle is simply incompatible with an inelastic, flexible material in opposition to the examiner's assumptions.

3. My method of wrapping an ankle (09/706,992) is a simple figure 8 with only one layer of material passing under the foot. Castiglia's method is very complex (as described in Nos. 3 & 4, above) and has no resemblance to a simple figure 8.

In my previous letter to "The Honorable Commissioner of Patents and Trademarks", dated August 20, 1999, I offered to come to Washington D.C. to demonstrate the value and unique qualities of the ankle brace I invented. I would like to repeat that offer at this time.

I believe that within 30-40 minutes I could successfully dispel all doubts of the examiner(s) and refute all assumed reliance on both Wise (3,777,751) and Castiglia (4,085,746).

Respectively,



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